



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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Internal/External
Section 8
Contact: Susan Campbell

May 2, 2014

MEMORANDUM FOR: Glenda L. Fesperman, Director, Office of Asset Management,

4EHMLAT

FROM: Susan E. Campbell, Associate Regional Counsel for Housing Finance and
Programs, 4FC

SUBJECT: [REDACTED]: Elderly Designation under HAP
Contract

You asked me to review the HAP contract for the subject project as well as the March 6, 2014 letter from [REDACTED] to provide an interpretation of the term "elderly families" as it applies the applicable Housing Assistance Payments (HAP) contract. This issue hinges on statutory definitions of "families," "elderly families," and "elderly person." Therefore, the content of this memo will be limited in scope to the discussion of various definitions and will not address any matters related to FHA mortgage insurance.

According to your March 13, 2014 email, your office performed an occupancy and management review in response to a complaint received from the [REDACTED] Police in December 2013 regarding crime and drug problems at the project. During your review, you found over 170 of the 271 units contained households with disabled residents/families under the age of 62. Because the AHAP, signed in 1977, and the HAP, signed in 1979, designated 28 units as "handicapped elderly" and 243 units as "elderly," your office wrote a letter informing the owner that it was not in compliance with the HAP contract. You directed the owner to comply with the contract and create a plan to market and lease to elderly residents "as units turn to get back to the HAP requirements." In response, [REDACTED] sent his letter, asserting the owner has complied with the HAP contract as well as HUD statutory and regulatory requirements based upon the definitions of "families" and "elderly families" that applied during the development of the project.

At the time of execution of the AHAP and the HAP, the term "families," as defined in Section 3(b)(3) of the United States Housing Act of 1937 (1937 Act), "include[d] families consisting of a single person in the case of (A) a person who is at least sixty-two years of age, is under a disability as defined in section 223 of the Social Security Act¹, has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of

¹ 42 U.S.C. 423.

Rights Act²), or is handicapped” The term “elderly families” was defined to include “families whose heads (or their spouses), or whose sole members, are persons described in clause (A).”

Under these definitions, a single person with a disability under the age of 62 or a larger family that includes one person with a disability under the age of 62 would be considered an “elderly family.” Consequently, a unit would be considered to house an elderly family even though there may be no family members who are over the age of 62. Therefore, the owners of Towers East are not permitted to discriminate against disabled families based upon the age of the family members.

The 1979 HAP contract contained an allocation of units between “elderly” and “handicapped elderly” units. It is somewhat confusing that the contract includes the allocation considering the existing definition of “elderly” was broad enough to include nonelderly disabled families. I made an inquiry to Headquarters OGC regarding the reasoning for the allocation, but it remains unclear why HUD went beyond the elderly benchmark to add an allocation for handicapped elderly as it appears in this contract. However, the answer to this question does not change the requirements as they apply to the owner.

As described in [REDACTED] letter, Congress amended the definitions of “families” and “elderly person” in the Housing and Community Development Act of 1992 (the 1992 Act) in response to calls to define “elderly families” more narrowly. As a result, “families,” as defined in Section (3)(b)(3)(B) of the 1937 Act now includes “families with children and, in the cases of elderly families, near-elderly families, and disabled families, means families whose heads (or their spouses), or whose sole members, are elderly, near-elderly, or persons with disabilities, respectively.” “Elderly person” is defined in Section (3)(b)(3)(D) to mean “a person who is at least 62 years of age.” Under the 1992 definition, a family must include a least one person over the age of 62 to be considered an “elderly family.”

The 1992 Act also amended section (8)(d)(2) of the 1937 Act to allow owners of “covered”³ section 8 housing projects to establish elderly preferences provided the owner (1) could show the project was designed for the elderly as defined in 1992 and (2) reserved a certain number of units for non-elderly disabled families. The specifics of this reservation requirement, as implemented by HUD, can be found in 24 CFR 880.612a(c)⁴. The owner is not required to establish an elderly preference.

In this case, the owner is authorized to establish an elderly preference and would not be required, pursuant to 24 CFR §880.612a(a)(2), to obtain HUD approval to do so. However, the owner is required to disclose this election when it prepares Addendum B of Form HUD-9834. As of 2011, Addendum B indicated that the owner had not established an elderly preference. Since HUD did not receive an Addendum B for the 2014 management and occupancy review, we do not know if the owner established an elderly preference after 2011. Without an election, the owner must abide by the pre-1992 definitions of “families” and “elderly families.”

Based upon my research and confirmation with OGC staff in the Office of Assisted Housing in Headquarters, the residency profile described in your February 21, 2014 letter meets

² 42 U.S.C 15002.

³ Pursuant to Section 683(2)(G) of the 1992 Act, a “covered project” includes “housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937, as in effect before October 1, 1983, that is assisted under a contract for assistance under such section.” 42 U.S.C §13641(2)(G).

⁴ The provisions of part 880 apply to properties subject to part 881 pursuant to 24 CFR §881.601.

HUD requirements, so the owner is not in violation of the HAP contract solely because the project houses over 170 non-elderly disabled families. While HUD may direct the owner to take certain steps to address the crime and drug issues that trouble this project, it may not direct the owner deny tenancy to non-elderly disabled families and may not require the owner to establish an elderly preference.

If you have any questions or need me to consider other issues, please contact me at susan.e.campbell@hud.gov or 336-851-8034.